APPENDIX

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Petitioner's Brief in the Court Below, pp. 5-6.

Trial Court Prejudged the Case

Actually, the equitable claims of our complaint were summarily dismissed from the cause by the court at the first pretrial hearing of May 8, 1964, before she had even read any depositions (IV R. 1809) and long prior to offer of any proof at the trial, which did not commence until February 8, 1965.

Proceedings of that pretrial conference were transcribed by the official court reporter and as filed by her, over her certification, are printed in IV R. 1789-1818. Not all of the court's remarks on the matter of equitable claims were reported in the certified transcript of that May 8 hearing, a statement of the court indicating she had prejudged the case having been omitted. The certified version does reveal (IV R. 1809) that at the hearing the court not only indicated she was not "too impressed with the plaintiffs' causes of action" (which had been set forth in five counts in a typed complaint comprising 55 legal-size pages), but further indicated that it was "inconceivable" to her that she would grant any of the equitable relief sought, irrespective of what the evidence was.

Thus was dismissed from the case before trial any claim for equitable relief. The court's prejudgment effectually left in the complaint only Count Three seeking damages, and in remarks edited from the certified transcription of that May 8 hearing (but now contained in the printed record as a result of motion, as later detailed) the court indicated she looked with equal disfavor on Mrs. Grey's recovering any money in this action:

"She doesn't want the property back, she just wants some money. I don't know what she wants with any more money. She's got all she can possibly use."

Appellants' counsel immediately made inquiry of the court as to the source of her information prompting her prejudicial prejudgment that Mrs. Grey needed no more money. The only reply came from an attorney[4] for the Bank:

"Well, I'll confirm it." (I R. 33, line 5).

It was not until after an extensive motion was filed below by appellants in the fall of 1965 seeking correction of the record (including specifically the certified transcription of the May 8, 1964, hearing) and a hearing had on such motion that the court reporter released to counsel for appellants two typed pages (photostatic copies of which appear at I R. 32 and 33) containing the above-quoted language of court and counsel as to Mrs. Grey already having all the money she needed, which prejudicial remarks had theretofore been edited from the certified transcript.

Mrs. Grey's financial status was never in issue and, of course, should have had no proper place in determination of the merits of the complaint.

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[4] The same one who later was allowed by the trial judge a fee of $50,000., to be paid out of appellants' trust funds for "defending" their trust in this suit.